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March 5, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 1, 2009

Case Number: TSO-0829

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

I. Background

The individual is employed at a Department of Energy (DOE) facility where his work requires him to have an access authorization. In April 2009, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address the individual's alcohol use. In addition to the PSI, the LSO requested the individual's medical records and recommended a psychiatric evaluation of the individual in June 2009 by a DOE consultant psychiatrist (DOE psychiatrist). The DOE psychiatrist concluded that the individual met the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) diagnosis for Alcohol Dependence. The DOE psychiatrist further concluded that the individual's mental illness causes or may cause a significant defect in his judgment and reliability.

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

In August 2009, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J respectively). 2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual presented the testimony of seven witnesses - a co-worker, a supervisor, an EAP psychologist, an alcohol counselor, his Alcoholics Anonymous (AA) sponsor, an aftercare facilitator and his sister. He also testified on his own behalf. The DOE and the individual submitted a number of written exhibits prior to and during the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

2/ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites two criteria as bases for suspending the individual's security clearance, Criteria H and J. To support Criterion H, the LSO relies on the DOE psychiatrist's report that the individual has been diagnosed with Alcohol Dependence which causes or may cause a significant defect in the individual's judgment and reliability. To support Criterion J in this case, the LSO relies on the following information: the individual has had three alcohol-related arrests, the individual acknowledges that he has consumed alcohol as a method to self-medicate himself for stress, the individual acknowledged that he had consumed alcohol to intoxication ten times from 1978 to the present, and the individual admitted that he has engaged in binge drinking behavior twice between 1993 and 2008 when he consumed eight beers in a four-hour period.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. First, a mental condition such as Alcohol Dependence can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

The relevant facts in this case are uncontested. The individual has a history of excessive alcohol use that has resulted in three alcohol-related arrests. Specifically, in 1983, the individual was arrested and charged with Driving While Intoxicated (DWI) after drinking between five and eight 12 ounce beers prior to getting in his vehicle. DOE Exh. 3. In February 2007, the individual was arrested and charged with another DWI. *Id.* The individual admitted that he had consumed one and one-half pints of beer at one location and two more 12 ounce beers at another location before getting in his vehicle and becoming involved in a traffic collision striking another motor vehicle. *Id.* The

resulting crash caused the individual's arrest. *Id.* The individual was arrested and charged with DWI on the third occasion in December 2008. At this time, the individual had again consumed one and one-half pints of beer at a local bar and restaurant before getting in his vehicle and driving. *Id.*

These last two alcohol-related incidents prompted the LSO to conduct a PSI of the individual in April 2009. *Id.* During the interview, the individual admitted that he had consumed alcohol as a method to self-medicate himself for stress and had increased his consumption of alcohol in the time period between his 2007 and 2008 arrests. *Id.* The individual also admitted that he had consumed alcohol to intoxication ten times from 1978 to the present, with the most recent occurrence in the winter of 2007 when he consumed up to eight beers in a three or four-hour period. *Id.* In addition, the individual admitted that he has engaged in binge drinking behavior twice between 1993 and 2008 when he consumed eight beers in a four-hour period. *Id.*

When the 2009 PSI did not resolve the individual's alcohol issues, the LSO referred the individual to a DOE psychiatrist in June 2009 for a forensic evaluation. During his evaluation, the individual expressed concern about his previous use of alcohol and acknowledged that his alcohol consumption contributed to the loss of his marriage. After examining the individual, the DOE psychiatrist concluded that the individual suffers from Alcohol Dependence and opined that there is no evidence of adequate rehabilitation or reformation. DOE Exh. 11. He further opined that in order for the individual to achieve rehabilitation, the individual would need at least one year of complete sobriety. He concluded that the individual's illness causes or may cause a significant defect in his judgment or reliability. *Id.*

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). ^{3/} After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Alcohol Dependence- Criteria H and J

1. The Individual's Testimony

^{3/} Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

The individual did not dispute that he is an alcoholic and suffers from Alcohol Dependence. At the hearing, the individual acknowledged that he used alcohol to deal with the depression and stressors in his life, which included a separation from his wife and a pending divorce, as well as financial constraints. Transcript of Hearing (Tr.) at 122. He testified that he has now learned how to utilize the appropriate tools to address his stressors. *Id.* The individual stated that he first recognized the role of alcohol in his life when he was arrested for DWI in December 2008. *Id.* at 123. At this time, the EAP psychologist referred the individual to an intensive outpatient program (IOP) which he entered in February 2009 and completed in April 2009. The IOP consisted of multiple weekly counseling sessions and required AA attendance. The individual testified that this was a “wake-up call” for him and reiterated that he has been diligently attending AA from January 21, 2009 to the present. *See* AA Meeting Attendance Verification Forms, Indiv. Exh. H *Id.* The individual testified that AA has given him the tools to handle life’s stressors. *Id.* at 126. He further testified that he has a good support system and continues to attend alcohol counseling through the Employee Assistance Program (EAP). *Id.* at 128. The individual now describes himself as being more open and honest with his family. *Id.* at 133. He testified that he last drank alcohol on January 17, 2009, and has no intention of drinking in the future. *Id.* at 126, 154. The individual further testified that he fully intends to continue working the AA program and utilize his support network. *Id.* at 147.

During the hearing, the individual also offered the testimony of seven witnesses to corroborate his testimony: a co-workers, a supervisor, an EAP psychologist, an alcohol counselor, AA sponsor, an aftercare facilitator and his sister. The individual’s co-worker, supervisor and sister all testified that the individual is an honest and reliable person. *Id.* at 11, 25, 37. Both the individual’s co-worker and sister further testified that they have noticed a change in the individual since he began attending AA meetings in January 2009. *Id.* at 11, 37. They also believe that the individual has made a permanent change in his life and has no intention of drinking again in the future. The EAP psychologist, who first met with the individual in 2005 when he was referred by his supervisor, stated that she has observed growth in the individual and believes he has learned a lot about himself. *Id.* at 49. She added that the individual has a lot of tools available to help him and has strong social support. *Id.* The individual’s AA sponsor has known the individual since January 2009 and corroborated the individual’s testimony that he regularly attends AA meetings. *Id.* at 77. Finally, the individual’s alcohol counselor, who has considerable experience with addiction issues, met the individual in February 2009 and referred him to an outpatient treatment program. She believes that the individual has a good prognosis as long as he utilizes his support system. *Id.* at 104, 115.

2. The DOE Psychiatrist’s Testimony and Report

The DOE psychiatrist stated in his Psychiatric Report that the individual suffers from Alcohol Dependence. DOE Exh. 11. He further opined that the individual’s illness causes a significant defect in his judgment and reliability. After listening to the testimony of all of the witnesses in this case, the DOE psychiatrist testified that he was very encouraged by the individual’s progress, his diligence in the AA program and his involvement with his alcohol counselor and AA sponsor. *Id.* at 161. Although he stated in his Report that he would like to see the individual achieve a year of sobriety for adequate rehabilitation and reformation, he testified that the individual, in light of his progress and commitment to recovery, could fulfill that requirement early. *Id.* at 162. The DOE

psychiatrist further testified that the individual has been sober for a little more than ten months, and stated that the individual has equipped himself with support mechanisms that will likely carry him through a risky time period. *Id.* He concluded that the individual has achieved adequate rehabilitation and reformation. *Id.*

3. Hearing Officer's Evaluation of the Evidence

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009). ^{4/} Regarding rehabilitation, I gave considerable weight to the opinion of the DOE psychiatrist, who opined that the individual is adequately rehabilitated. Moreover, from a common-sense perspective, the following factors weigh in favor of restoring the individual's access authorization. During the hearing, the individual credibly testified that he now has the tools to deal with life stressors and no longer uses alcohol to self-medicate. Tr. at 122. In addition, the individual acknowledged his alcoholism and is committed to his sobriety. Moreover, he has taken positive steps toward rehabilitation, including his participation in an outpatient alcohol program, his regular and diligent participation in AA, as well as his ongoing counseling sessions with an alcohol counselor. In addition, the individual has demonstrated an established pattern of abstinence. *See* Adjudicative Guideline G at 23(b). Based on the foregoing, I am persuaded by the DOE psychiatrist's opinion that the individual has made excellent progress and has demonstrated a commitment to recovery, and furthermore that the individual is adequately rehabilitated. *Id.* Therefore, I find that the individual has provided adequate evidence to mitigate Criteria H and J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criteria H and J. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman

^{4/} Decisions issued by OHA are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

Hearing Officer
Office of Hearings and Appeals

Date: March 5, 2010